Division of Water Quality Summary and Responses to Public Comments
General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4) (UTR090000)

July 2010

The Division of Water Quality's Municipal Separate Storm Sewer System (MS4) General Permit, UTR090000 was originally public noticed from December 4, 2009 to January 7, 2010. DWQ response to comments received during this public notice period is posted at http://www.waterquality.utah.gov/PublicNotices/index.htm. The public notice period for the second draft of the permit began on May 22, 2010 and ended on June 24, 2010.

The following are the specific comments and the Division's responses. Any changes made to the second public notice version of this permit are indicated in bold type in the response.

SPECIFIC COMMENTS (permit citation included):

Comment (1.4.4.): *Please clarify or identify what is meant by "other permit".*

Response: "Another Permit" refers to any other UPDES permit other than the General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) such as an industrial or construction storm water permit.

Comment (2.3.3.2): *The language "new or clarified" still exists in Part 2.3.3.2. although the response to comments received indicated that it would be removed.*

Response: **The presence of "new or clarified" in Part 2.3.3.2. is a typographical error and will be removed from the permit.**

Comment (4.1.2.): *Renewal Permittees are required to submit a revised SWMP within 120 days of permit reissuance. Part 4.1.2. requires the SWMP to be evaluated for effectiveness at 90 days. It would seem that the updated SWMP needs to be in place before it can be evaluated for its effectiveness*

Response: Part 4.1.2. addresses the need to have a documentation process in place before even beginning to evaluate the effectiveness of a SWMP. Part 4.1.2. does not require that the SWMP be evaluated at 90 days after permit reissuance but instead requires that a documentation process be created. The requirement to define a method for evaluating the success of each minimum control measure was a requirement of the current (2002) Small MS4 General Permit.

Comment (4.1.2.2.): *Please clarify how detailed this analysis should be. Does the State expect this analysis to be broken down into each of the six minimum control measures? Should the permittees track hours of individual employees engaged in storm water activities?*

Response: Each permittee will fund its SWMP differently; therefore, permittees must submit an accounting of stormwater-related budgets, cost, and staffing resources. The fiscal analysis should document and explain changes to budgets from year to year and describe how each funding can and cannot be used for storm water program activities. The analysis must account for resources utilized for compliance with this permit which includes all six minimum control measures and staff time.

Comment (4.1.2.2.): *This permit puts a bigger financial burden on municipalities struggling to meet the requirements of the old permit. How do you propose we obtain these resources when building and tax revenues are down?*

Response: Many MS4's have funded their storm water programs with storm water user fees based on impervious area. Many MS4's are cross-training other municipal staff to aid in complying with storm water permit requirements.

Comment (4.1.3.2.): *Request that language is added to include "position" responsible*

Response: It is the Division's desire to know the name and contact number of the person responsible for implementing or coordinating the BMPs contained within the SWMP document. If this person(s) change during the permit term, the changes should be made in the SWMP document and such changes should be forwarded to the Division.

PUBLIC EDUCATION AND OUTREACH

Comment (4.2.1.): *Since Hill Air Force Base has a separate Industrial permit, does Hill AFB have to include MS4 industrial facilities in its outreach program?*

Response: Activities at Hill Air Force Base that were covered under a Sector P industrial permit will now be covered under the MS4 General Permit as with all other regulated MS4s. The other industrial activities conducted at HAFB that are currently cover under an UPDES industrial permit will retain covered under this permit.

PUBLIC INVOLVEMENT/PARTICIPATION

Comment (4.2.2.3): *What does making a current version of the SWMP document" available for public review and input for the life of the Permit" mean?*

Response: The Storm Water Management Program document must be kept current and factual and made available to anyone who requests to review it. Permittees must have a mechanism for accepting and documenting any input received on the SWMP document. Additionally, if the permittee maintains a website, a current copy of the SWMP document must be posted on the website with a mechanism to receive input. Examples of such a mechanism could be a phone number or email address to contact to provide input. The intent of this provision is to engage the general public and various stakeholders in the planning and

implementation of the Permittee's storm water management program. Please see Chapter 2 of EPA's MS4 Permit Improvement Guide for further information and discussion of involving the public in planning and implementing the SWMP:

http://www.epa.gov/npdespub/pubs/ms4permit_improvement_guide.pdf.

ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)

Comment (4.2.3.2.): *What is the definition of spill? Without a definition of "spill", anything that touches the ground would need to be regulated. What is meant by recalcitrance in this section?*

Response: The requirement of Part 4.2.3.2. is to have an ordinance or some sort of regulatory mechanism to prohibit non-storm water discharges. Non-storm water discharges may be in the form of an illicit connection, illegal dumping, a sanitary sewer overflow, spill, etc. Even in the case of an accident such as a spill, the material is still prohibited from entering the storm drain system and associated receiving water. Therefore an ordinance or other regulatory mechanism must address proper containment, collection and disposal of spilled material. The permittee must have escalating enforcement procedures as needed based on the severity of the violation and/or the recalcitrance of the violator. Recalcitrance of the violator refers to repeat violators. A variety of enforcement actions is needed in order to reserve harsher punishment for repeat violators where previous enforcement actions were not a sufficient deterrent (e.g., a larger penalty).

Comment (4.2.3.2): *Total elimination of SSOs is not practical. Many SSOs are a result of emergency and unanticipated problems. There is a point where additional time and effort are not worth the end result. SSOs that are not a part of emergency operations should have a higher priority and much can be done to eliminate them, but emergency actions do occur from time to time. Would the State consider softening the word "must"?*

Response: The intent of this provision is to emphasize that sanitary sewer overflows (SSOs) are illicit discharges and prompt response to these occurrences is the best way to prevent negative impacts to waterbodies. Therefore, the term "must" is as imperative as the term "shall" in Part 4.2.3.6. when addressing immediate cessation of improper disposal practices. Please note the language in Part 4.2.3.6.1 which requires the permittee to contact the Division if unable to meet the criteria in 4.2.3.5. or 4.2.3.6. Part 4.2.3.5. concerns steps taken to contain the discharge and initiating an investigation while Part 4.2.3.6. addresses the immediate cessation of improper disposal practices and enforcement if the discharge is not eliminated.

Comment (4.2.3.6.1): *Please define what is meant by "all IDDE documentation must be included in the SWMP document." Does this mean that each time an IDDE investigation is document in the SWMP, the SWMP then has to be updated and sent to the State?*

Response: Unless specifically requested, individual documented efforts to comply with particular BMPs (e.g., inspections, investigations, survey results) do not have to be submitted to the State. However, this documentation must be retained with the permittee's copy of the

SWMP. Please also note that when it is necessary to update the State's copy of a SWMP, just the pages or sections should be submitted, not the sections of the document that remain unchanged.

Comment (4.2.3.8.): *Does posting a location and phone number of a local household hazardous waste facility on the city's website meet the requirements of this paragraph? Please provide examples of "promoting" services for the collection of household hazardous waste.*

Response: Yes, the description above is one example of promoting the collection of household hazardous waste. Many programs also send out information with utility billings and include a list of area merchants that accept various wastes for recycling or proper disposal. This can include listing the business, location, phone number and type waste that is accepted. Some programs address the proper disposal of pharmaceuticals, electronics, and fluorescent tubes. It is beneficial to give residents as many options as possible as well as a thorough explanation of what is considered household hazardous waste to effectively promote proper disposal.

Comments (4.2.3.9.): *Does posting a hotline on the city's website meet the requirements of this paragraph?*

Response: Yes. Permittes must set up a hotline consisting of any of the following (or combination thereof): a dedicated or non-dedicated phone line, E-mail address, or website.

Comment (4.2.3.10.): *The State is requiring a database to be created and maintained. What is the definition of database as it pertains to this permit? Would a permittee be in violation of the permit if this information were kept in a hard file?*

Response: The intent of this part is for permittees to not only document compliance with this permit but to do so in a manner that facilitates program planning and evaluation. For the purposes of this permit, a "database" is an organized body of related information. The permit does not stipulate an electronic database so therefore a hard file would not be a violation of this permit.

CONSTRUCTION SITE STORM WATER RUNOFF CONTROL

Comments (4.2.4): *How does a larger common plan of development differ from a city's master plan?*

Response: "Common plan of development or sale" is a term associated with construction projects. Anyone who disturbs greater than or equal to one acre of land, including projects less than one acre that are part of a larger plan of development (e.g., strip mall, residential subdivision) must obtain a permit. A city's Master Plan is a comprehensive plan that addresses long range planning, economic growth, and quality of life often taking into consideration land uses, development of public facilities, and an analysis of transportation patterns.

Comment (4.2.4.3.3): *Is it the purpose of the SWPPP to become the vehicle to evaluate a design and require design changes be incorporated into the site design? LID and green infrastructure is already mentioned in this permit, why mention it again in this part?*

Response: This particular permit citation is a component of Part 4.2.4.3. which addresses review procedures that should occur before construction begins. Prior to land disturbance many factors must be reviewed and evaluated; one of which is an evaluation of opportunities for the use of low impact design (LID) and green infrastructure. The term LID appears in the permit in Part 4.2.1.6. as a training requirement for MS4 staff; in Part 4.2.4.3.3 as a component of plan review; in Part 4.2.5.3.2 as it relates to long-term storm water management (post-construction); and in Part 4.2.6.4. as it relates to MS4 facilities.

Comment (4.2.4.4.1): *The first permit had a requirement of one inspection for the life of the permit. It should be left to the MS4 to decide how often to conduct an inspection that requires a report to be filled out. Suggest a site visit and action log be required instead. What do we do with all the inspection forms? Do we send them to the State, what does the State do with them?*

Response: The first permit, UTR090000, did not specifically indicate only one inspection for the life of the permit. The language in the permit requires site inspections and enforcement of control measures. The intent was that MS4s would conduct inspections and reinspections during all phases of construction. There is no change to the minimum inspection requirements contained in this permit.

In terms of filling out the State inspection form, the form functions as an action log in effect. The first page with the general information only needs to be filled out once and the second page becomes the "log" of subsequent inspections and actions taken. The permit requires that all documentation associated with the compliance of this permit be maintained by the permittee for five years. In the specific case of construction site documentation; documentation must be maintained for five years or until construction is completed, whichever is longer.

Only permittees that have been notified to submit inspection reports on a monthly basis must do so. In this case, data from the reports is entered into a database for State and EPA review. All other permittees do not need to submit inspection reports on a regular basis although inspection reports may be requested at anytime to determine compliance.

Comment (4.2.4.4.1): *"The response from the last permit says that this is covered by the contractor doing their inspections. Who is going to be forcing the Contractor to use the State form? The division response to previous comments submitted indicated that this is the responsibility of the contractor. If the contractor will be performing these inspections that point should be clarified in the permit."*

Response: Construction site operators must perform inspections as dictated by the UPDES General Permit for Construction Activities. Any inspections conducted by construction site operators are <u>in addition</u> to the inspections required by MS4 permittees as dictated in this permit. Construction site operators are not required to use a particular inspection form at this time. As stated on the Division's website, the Construction Storm Water Inspection Form (Checklist) is to

be used by DWQ and municipalities for inspection of construction projects throughout the State. Part 3.5.4.g. of the General Permit for Construction Activities, UTR300000 lists the minimum information that should be included in a construction site operator's inspection.

Comments (4.2.4.4.1), (4.2.4.4.2): *Propose monthly inspection requirements change to quarterly in MS4's where their SWMP requires at least bi-weekly submittal of all inspections, action items, and site details that might warrant a concern. Propose bi-weekly inspections on high priority sites be changed to monthly. Propose conducting "oversight" inspections of 10-15% of active construction sites. Isn't EPA's oversight requirement for States at or near the 10% level?*

Response: The requirements of the Construction Site Storm Water Runoff Control MCM of the MS4 permit are designed for permittees acting in an oversight role for construction activities within their jurisdiction. There are many ways to oversee construction site storm water management and permittees may wish to have self-inspection reports sent to them rather than retaining and reviewing them on-site. However, permittees must additionally verify in the field that construction operators are meeting the requirements of the General Permit for Construction Activities as well as any local requirements. Yes, EPA has indicated the minimum performance measure for our state which is in addition to local storm water management programs regulated by MS4 permits. There is no change to the minimum inspection requirements contained in this permit.

Comment (4.2.4.4.1; 4.2.4.4.3): *Would the MS4 have to inspect construction sites even when the construction site operator is not required to self-inspect (General Construction Permit:3.5.4.c)?*

Response: Part 3.5.4.c. of the General Permit for Construction Activities states that construction operators do not need to conduct inspections if all of the following requirements are met:

1) The project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month);

2) Land disturbance activities have been suspended; and

3) The beginning and ending dates of the waiver period are documented in the SWPPP.

MS4 staff must confirm that all three of these requirements are met and that BMPs on the site have been installed properly to handle snow melt when it occurs. If in fact all of these conditions have been met, the "inspection" would be brief.

Comment (4.2.4.4.1): *The permit should include a definition of "qualified personnel".*

Response: The term "qualified personnel" is used throughout this permit. Permittees are required to make this determination and set standards and criteria as they deem necessary to comply with this permit.

LONG-TERM STORM WATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT (POST0-CONSTRUCTION STORM WATER MANAGEMENT)

Comment (4.2.5.1.): "*Please define long-term post-construction storm water controls".*

Response: "Long-term post-construction storm water controls" are any structures designed to convey storm water such as pipe and catch basins, structures designed for flood management, as well as structures that infiltrate, evapotranspire, or allow for harvesting. Some examples are given in Part 4.2.5.3.2 of the permit. The use of "long-term" is in contrast to the short-term, temporary storm water controls utilized during active construction (e.g. silt fence) and are designed to be permanent. Long-term post-construction storm water controls can be non-structural as well (e.g., master plans, zoning ordinances, riparian zone preservation). As with all BMPs, it would be impossible to include a comprehensive list of all possible long-term post-construction storm water controls in permit language. Further guidance and examples can be found at:

http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=min_measure&min_measure_id=5

Comment (4.2.5.2.1): *Please define what is meant by "chronic and recalcitrant".*

Response: Chronic and recalcitrant violators are repeat violators in which educational efforts and warnings have not served as a deterrent. It is the intention of this permit citation to require that permittees have a variety of enforcement actions that escalate in severity to be applied as needed according to the severity of the violation or in the case of chronic/recalcitrant violators.

Comment (4.2.5.3.2): *Please define the word "evapotranspire".*

Response: Evapotranspiration is the combination of water evaporated from the soil surface and the amount of water transpired by growing plants. The use of this term in this permit refers to storm water BMP's that evapotranspire storm water rather than merely piping the water and routing to a receiving water. A green/vegetative roof that consists of a veneer of vegetation that covers an otherwise conventional flat or pitched roof and allows for storm water capture rather

than runoff is an example of a BMP that allows evaporation and evapotranspiration to occur. Simply routing runoff to landscaped areas also promotes evapotranspiration along with infiltration. Other BMPs that have an evapotranspiration component include:

- A bioswale is a broad, shallow channel with a dense stand of vegetation covering the side slopes and bottom. They are designed to treat storm water primarily through filtration although evapotranspiration plays a role as well with plant uptake of water before conveying the flow to a downstream discharge location. This is also the case with wetlands and grassed swales.

- Rain gardens are excavated shallow surface depressions planted with specially selected native vegetation to treat and capture stormwater runoff. Rain gardens typically consist of a rock layer under drain wrapped in geotextile to prevent clogging pore space with a highly porous soil placed at the surface for planting native vegetation. Rain gardens are designed to reduce runoff volume, filter pollutants, recharge groundwater via infiltration, and enhance evapotranspiration of storm water.

- Retention/Detention Basins are the most typical form of storm water runoff control used in areas of development. These are shallow impoundments placed down slope of large earth disturbances to capture storm water and allow retention, infiltration, evaporation and evapotranspiration to occur over a period of several days.

Comment (4.2.5.3.3): *Who determines if a developed site is "adversely impacting water quality"? How is adverse impact defined?*

Response: The permittee must determine adverse impact according to the following factors:

- Locations that contribute pollutants of concern to an impaired waterbody

- Locations that contribute to receiving waters that are significantly eroded

- Locations that are tributary to a sensitive ecosystem or protected area

- Locations that are tributary to areas prone to flooding

An evaluation and ranking of the inventoried locations to prioritize retrofitting should include:

- Feasibility

- Cost effectiveness

- Pollutant removal effectiveness

- Impervious area potentially treated

- Maintenance requirements

- Landowner cooperation
- Neighborhood acceptance
- Aesthetic qualities, and
- Efficacy at addressing concern.

A supplemental fact sheet will be developed to provide further assistance with this permit provision.

Comment (4.2.5.4.3): *Why do permittees need to keep a representative copy of information provided to design professionals? Why is it important to keep track of dates and mailing lists of recipients that have received educational materials?*

Response: A representative copy (i.e., example) of educational materials as well as the distribution list is not only necessary to determine compliance with the permit requirements during an audit, but should also be used by the permittee to track who has received the educational materials, who should be added to the list, and to evaluate effectiveness of the message as well as the distribution method. All documentation required in this permit should be used by the permittee to evaluate its SWMP and determine which BMPs are successfully meeting the permit requirements and which ones need to be modified or changed.

Comment (4.2.5.5.2): *The term "qualified personnel" needs to be defined for this section since it may have a different meaning than in other areas of the permit.*

Response: The permittee must determine if personnel have the skills and knowledge to perform tasks and duties necessary to comply with this permit. Each minimum control measure has different tasks that require specific knowledge and skills.

Comment (4.2.5.6.): *What is considered "adequate training" for staff involved in post-construction storm water management, planning and review, and inspections and enforcement?*

Response: For this particular permit citation, staff must be knowledgeable in long-term storm water management (post-construction), planning and review, and inspections and enforcement. This includes being knowledgeable of structural and non-structural storm water controls. A permittee's resources may determine what sort of training they are able to provide their staff. Regardless of whether the training consists of workshops, conferences, in-house training or EPA webcasts, MS4 staff must understand this permit's requirements and possess the knowledge and skills to comply with it.

Comment (4.2.5.6.): *Will the State be helping with providing training on post-construction storm water management?*

Response: The Division currently and will continue to present at various conferences and workshops on all storm water management issues. The Division will also assist the MS4s by notifying them of EPA-sponsored webcasts and educational links. The Division is currently using the EPA MS4 Permit Improvement Guide to develop fact sheets to provide further guidance to permittees.

POLLUTION PREVENTION AND GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS

Comment (4.2.6.7.): *This part belongs in the construction section of the permit.*

Response: Flood management is addressed in this MCM because of the potential of flood management structural controls owned or maintained by the permittee, or those that discharge to the MS4, to affect water quality. The focus of storm water management in the past has been to control flooding and mitigate property damage, with less emphasis on water quality protection. Storm water treatment and flow control structures may handle a significant amount of storm water and therefore there exists an opportunity to modify their design to include water quality features for less than building new controls. Ensuring that any needed repair or maintenance is conducted in a timely fashion is also necessary to protect water quality.

Comment (4.2.6.4.3): *How do alternative landscaping materials such as drought tolerant plants affect water quality?*

Response: Native, drought tolerant plants are naturally resistant to local pests and diseases and therefore do not require many of the chemical additives used in traditional landscaping (e.g., fertilizers, herbicides). Since these plants do not require as much water or chemical additives, there is less polluted runoff from sites that are planted with native, drought tolerant vegetation. The following link has more information on how landscaping and lawn care can affect storm water quality:

http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=97

Comment (4.2.6.4.5): *A clarification of what is meant by snow disposal would be helpful. When an MS4 plows the roads, snow is being stored temporarily on the side of the road, until it melts or is "disposed" of by melting. When a big box store plows their parking lot, they typically*

dispose of snow by stacking it in big piles in corners of the parking lot or near light poles, until it melts and runs into the storm drain. Is this considered a violation of this section?

Response: The meaning of "snow disposal" area in this permit citation was intended to apply to situations that warrant off-site disposal of snow**.** If a permittee needs to move snow to a stockpile, this location should be sited such that the snowmelt does not runoff into any waterways or storm drains. The SOPs associated with cold weather operations mentioned in Part 4.2.6.4.5 should address smaller areas of snow storage such as parking lots and along side streets. These SOPs should contain BMPs to minimize the impacts of cold weather operations. A fact sheet concerning snow plowing, snow storage and de-icer application is currently being developed and will be posted on the Division's website.

Comment (4.2.6.6.1): *Are weekly visual inspections required for ALL permittee-owned or operated facilities?*

Response: Inspections required by subparts of Part 4.2.6.6. was intended to apply to those facilities determined to be "high priority" as defined in Part 4.2.6.3. **The words "high priority facilities" has been added to Part 4.2.6.6.1 so that it is consistent with Parts 4.2.6.6.2 and 4.2.6.6.3.**

Comment (5.1): *This permit requires the implementation of the IDDE program. A component of the IDDE program is dye testing of water to identify the source. According to the narrative standard in Part 5.1., it is unlawful for the permittee to discharge or place any waste or other substance that changes the color of the water.*

Response: Dye testing is an acceptable practice in determining illicit connections. The small amount of non-toxic dye needed to conduct such a test does not constitute an illicit discharge and does not meet the intent of this permit citation.

Comment (6.8.2.): *Inspection reports should not have to be signed by the principal executive officer/ranking official. Does this include all reports?*

Response: Part 6.8.2. is standard permit language which requires all reports required by the Permit and other information requested by the Division to be signed, dated and certified by a principal executive officer or ranking official OR by a duly authorized representative of that person. The same language can be found in the General Permit for Construction Activities (Part 5.16) and the General Industrial Permit (Part VI.G). The certification statement that must accompany all NOIs, storm water management programs, SWPPPs, reports, certifications or information either submitted to the Division or that this permit requires to be maintained by the permittee, must all contain the certification statement in Part 6.8.3.